MOTION FILED
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(3)

No. 88-1151

In the
Supreme Court of the United States
October Term, 1988

MITSUE TAKAHASHI,
Petitioner,

v.

LIVINGSTON UNION SCHOOL DISTRICT, BOARD OF EDUCATION OF LIVINGSTON UNION SCHOOL DISTRICT, HAROLD THOMPSON, DALE EASTLEE, AND HAMILTON BRANNAN,
Respondents.

BRIEF FOR THE ASIAN PACIFIC AMERICAN COALITION [CALIFORNIA DIVISION] AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, 5TH APPELLATE DISTRICT

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MOTION BY RULE 36.3. THE AMICUS REQUESTS THAT THE BRIEF BE ACCEPTED WITHOUT THE CONSENT OF THE RESPONDENT.

The Amicus Curiae, Asian Pacific American Coalition [California Division] requests consent to file its brief. Petitioner's counsel consent has been obtained. However, Respondents' counsel consent has been requested and refused. The Amicus hereby moves the court to receive its brief absent that consent. See Footnote 1.

Respectfully submitted,

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Attorney for Amicus,
Member of the Supreme
Court Bar

February 8, 1989
[Telephone consent to Ellery to print this motion in San Diego, in lieu of signature to meet the time constraints.]

Footnote 1: Respondents claim they have not been personally served with a copy of Petitioner's Brief for the Writ of Certiorari [2/8/89]. Amicus curiae have learned that respondents have been indeed served. Nonetheless amicus curiae have been unable to obtain consent of respondents. The consent of Mr. Fleishman and his letter to the respondents attorneys Feb. 8, 1989, are filed with this brief: Respondents' attorneys are Atkinson, Anderson, Loya, Rudd & Romo, 4450 Black Ave. Suite A, Pleasanton, CA 94566. [415] 462-8830. At Atkinson Feb. 8, 1989, Cecelia stated that Mr. Peter Lucey and Ms. Angela Kreta were handling the Takahashi case but had received no petitioner's brief.

TABLE OF CONTENTS

PAGE

INTEREST OF AMICUS CURIAE.....1

REASONS FOR GRANTING THE WRIT

Under the decision below, petitioner and other minorities are denied the full and fair opportunity to litigate their claims that they have been subject to discrimination.....4

CONCLUSION.....7

TABLE OF AUTHORITIES ii

MOTION TO FILE BRIEF IN ABSENCE OF CONSENT OF RESPONDENT PRECEDES THE BRIEF

TABLE OF AUTHORITIES

PAGE

CONSTITUTION OF THE UNITED STATES

U.S. Const., Amend. XIV.....7

CASES:

Takahashi v. Board of Education of Livingston Union School District et al. 202 Cal.App. 3d 1464 [July 1988].....6

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INTEREST OF THE AMICUS CURIAE

The Asian Pacific American Coalition is a national organization. The California Division consists of five regions [hereafter referred to as APAC]. It is an independent, voluntary organization

of Asian Americans concerned with issues of discrimination against Asian Americans. APAC works on such issues as racial tension and hostility against Asians, safety of minority school children [as tragically reflected in the recent killing of school children in Stockton, CA], and educational programs to develop human rights awareness.

The interest of the amicus curiae in this case stems from these concerns with racial discrimination against Asian Americans. The zenith of discrimination against Japanese Americans in this country occurred during the internment of thousands of Japanese Americans during World War II. Petitioner Mitsue Takahashi was one of those persons interned in a prison camp. While these prisoners have only recently found a remedy,

through Congressional reparations, petitioner Takahashi and other Asian Americans are still suffering from discrimination. Ms. Takahashi and other minorities who work as certificated personnel in California schools have been denied a due process forum for the pursuit of their Constitutional claims of racial discrimination in employment. Though the California schools [as employers] have been provided a forum and remedy to dismiss teachers charged with "misconduct," qualified and licensed teachers and other employees are foreclosed from any opportunity to challenge the discriminatory dismissal. By being denied their constitutionallly protected right to work in an environment free from discrimination, these teachers are

continuing to suffer the discrimination historically faced by Asian Americans. And the State of California also suffers as it is losing experienced and qualified teachers through the denial of a forum to challenge discriminatory charges against them.

For these reasons, APAC, at its annual state meeting on January 28,1989, unanimously voted to file this brief as amicus curiae in support of the petition for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

Under the decision below, petitioner and other minorities are denied the full and fair opportunity to ligitgate their claims that they have been subjected to discrimination.

Under California law, a forum is provided for any person to sue another

for a breach of an express duty that results in damaages. However, there is an exception to this rule as related in the instant case --tenured teachers are denied such a forum to pursue claims of racial discrimintion when they are served with an action seeking their dismissal as "incompetent." When such an action is commenced by a school district employer, a hearing is held before the Commission on Professional Competence. During this hearing, issues concerning racial discrimination against the teacher, are not cognizable, since this Commission has no expertise in the prevention or remedying [of such] discrimination. Moreover, during the pendency of this hearing, the teacher is still deemed an employee, since no dismissal has occurred. Thus, at this time,

neither the California Fair Employment and Housing Commission nor the federal Equal Employment Opportunity Commission has jurisdiction to hear the discrimination claim.

But, as seen in the instant case, there is no forum in which to raise the discrimination claim after the administative hearing ruling against the teacher. The Court of Appeals in Takahashi v. Board of Education of Livingston Union School District et al. 202 Cal.App. 3d 1464 [July 1988] ruled that petitioner was barred from litigating her discrimination claim, without recognizing that petitioner never had a full and fair opportunity to present those issues in any legal proceeding. This decision, depriving petitioner of any opportunity to litigate her claim of employment discri-

mination, clearly violates both the Due Process and Equal Protection clauses of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari, should be granted.

Respectfully submitted,

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Attorney for Amicus
Member of the Supreme
Court Bar

February 8, 1989
[Telephone consent to Ellery to print the brief without signature to conform to time constraints.]

CASE NO. 88-1151
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OCTOBER TERM, 1988
MITSUE TAKAHASHI, Petitioner
v.
LIVINGSTON UNION SCHOOL DISTRICT
ET AL, Respondent

TO THE CLERK OF THE COURT
RULE 28 AFFIDAVIT OF MAILING

Edward H. Steinman is a professor of Law, at Santa Clara University School of Law, at the address: Santa Clara, CA 95053, telephone [408] 554-4443. He is a member of the Supreme Court Bar. He has written this brief at no expense to the Petitioner, and Juliet Ellery, law student, has produced this brief at no expense to the Petitioner, in San Diego. It is therefore nonfeasible to have the mailing done at Santa Clara. This affidavit unnotarized will be attached at the back of the brief. Additionally, after the mailing, the affidavit will be notarized and mailed under separate cover to the Clerk of the Court, as proof of mailing.

DECLARATION OF SERVICE BY MAIL
I, declare: That I, Juliet Ellery am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I reside in the County of San Diego, CA: 10405 Park Avenue, Santee, CA 92071.

I mailed by the US Mail in separate envelopes copies of the Amicus Curiae Brief of the Asian Pacific American Coalition to the court and the counsels of record at these addresses on February 10, 1989:

--40 copies to the Clerk of the Court, Supreme Court of the United States, Washington DC 20543
--3 copies to
Atkinson, Anderson, Loya, Rudd, & Romo
4450 Black Ave, Suite A
Pleasanton, CA 94566
--3 copies to
Stanley Fleishman,
Fleishman, Fisher, Moest
2049 Century Park Suite 3160
Los Angeles CA 90067

DATE_____\S_____
Juliet Ellery
BEFORE A NOTARY:State of California,
County of _____,ss.
On this_____day of _____in the year 1989 before me, the undersigned, a Notary Public in and for said State, personnally appeared _____ known to me [or provided to me on the oath of _____] to be the person whose name is subscribed to the within instrument, and acknowledged that he [she or they] executed the same.
--Witness my hand and official seal

_____
Name and Seal
Notary Public in
and for said State